The Asoka Mills Co. Ltd. Vs The Commissioner of Income Tax, Delhi, Ajmer, Rajasthan, Madhya Pradesh and New Delhi

Court: Bombay High Court

Date of Decision: Sept. 20, 1957

Acts Referred: Income Tax Act, 1922 â€" Section 10, 10(2), 10(5)

Citation: AIR 1958 Bom 373 : (1958) 60 BOMLR 35 : (1958) ILR (Bom) 319

Hon'ble Judges: Tendolkar, J; S.T. Desai, J

Bench: Division Bench

Advocate: S.P. Mehta and Hemendra K. Shah, for the Appellant; M.P. Amin, for the Respondent

Judgement

Tendolkar, J.
The question referred to us on this reference is:

Whether the assessee is entitled to claim for the assessment year depreciation allowance under Sections 10 (2) (vi) and 10(2) (vi-a) which When

added to the depreciation allowance, including initial depreciation allowance already made till then, would exceed the original cost to the assessee

of the depreciable asset?""

2. One would have thought that as a mere matter of common sense and accountancy, no depreciation can exceed the original cost to the assesses

of the depreciable asset, and the question, therefore, would be capable of an easy answer; but Mr. Mehta, appearing for the assessee in this case,

has put forward before us a rather ingenious argument to induce us to hold that under the provisions of the Income Tax Act depreciation

allowances are admissible even if the result of such allowances is that the total depreciation allowance in respect of an asset exceeds its original

cost.

3. Now, the relevant proviso with which we are primarily concerned is proviso (c) to Section 10 (2)(vi) and the proviso is in these terms:

the aggregate of all allowances in respect of deprecation made under this clause and clause (vi-a) or under any Act repealed hereby, or under the

Indian Income Tax Act, 1886 (II of 1886), shall, in no case, exceed the original cost to the assessee of the buildings, machinery, plant or furniture

as the case may be.

This proviso again, read by itself, loaves no room for any argument that the agreement of all allowances in respect of depreciation may exceed the

original cost to the assessee of the assets in respect of which depreciation is allowable; but then, Mr. Mehta has attempted to advance two

different arguments as to the correct interpretation of this proviso. The first branch of his argument is that this is a proviso only to a case which

forms an exception to the normal rule laid down in Section 10(2)(vi) that normal depreciation is to he allowed on the written down value; and

secondly, that when this proviso talks of the aggregate of all allowances in respect of depreciation ,there should not be included in this category

what is initial depreciation which is not to be included in computing written down value.

4. in order to appreciate these arguments, one must look at the Sub-section and the history of that Sub-section. Section 10 Sub-section (2)(vi)

deals with normal depreciation and it provides that the normal depreciation shall be allowed on the basis of a percentage on the written down value

of the asset. This position was brought about by an amendment of the Income Tax Act in 1939; but before that date depreciation was allowed on

the actual cost to the assessee, that is, his original cost and not on the written down value. But in enacting that from 1939 the depreciation will be

allowed on the written down value, the Legislature constituted one exception & that exception is where the assets are ships which do not ordinarily

ply on inland waters, that is, ocean-going ships. In respect of these ships, normal depreciation is to be calculated on the basis of the original cost

and the first branch of the argument of Mr. Mehta is that proviso (c) has reference only to ocean-going ships, in the case of which depreciation is

to be calculated on the original cost and not on the written down value. Now, so far as this argument is concerned, one has to keep in mind the fact

that although the Act was amended in respect of the basis on which normal depreciation was allowed by providing that the percentage allowable

shall be on the written down value and not on the original cost, the third proviso which fixes a ceiling on the aggregate of all depreciation

allowances has been in the Act from the very beginning, and, therefore, it was at all times, intended that whatever depreciation was allowed should

be subject to the proviso, that is, subject to the ceiling. But that is not all. It appears to us to be contrary to any known canon of construction that a

proviso to a section should he interpreted not as an exception to what the section enacts, but as applying to only an exception to the section. The

substantive part of Section 10(2)(vi) enacts that the depreciation shall be calculated at a percentage on the written down value and ordinarily a

proviso should be an exception to this substantive enactment. There is an exception to this substantive enactment in Section 10(2)(vi) itself, and

that is ocean-going ships, where the depreciation is to be calculated on the basis of the original cost. We cannot accede to the argument that the

proviso should be read as only applying to this exception and not to the substantive Sub-section.

5. Turning next to the clauses that have been invoked by Mr. Mehta for the purpose of the second branch of his argument, in 1946 Section 10(2)

(vi) was amended and in para 2 of that clause a provision is made for initial depreciation. This applied in the case of buildings that have been newly

erected or machinery and plant that has been newly installed after 31-3-1945, and this initial depreciation is in addition to all other depreciation.

However, in providing for this depreciation, the Legislature specifically provided in this paragraph ""which shall however not be deductible in

determining the written down value for the purposes of this clause"". Therefore, in order to ascertain written down value, for the purpose of

calculating the normal depreciation, initial depreciation is not to be taken into account. The normal rule for calculating written down value is to be

found in Section 10 Sub-section (5) and that rule in effect provides that the written down value is the actual cost to the assessee in the first year,

and in subsequent years the actual cost less the aggregate of all depreciation actually allowed to him; but by virtue of the provision made in regard

to initial depreciation, the initial depreciation is not to be taken into account in determining the written down value. The result, therefore, is that the

written down value of an asset in a given year does not take into account initial depreciation and a position may well be reached, as it was reached

in the present case, where if the other depreciation allowances were granted on the basis of the written down value, the total depreciation may

exceed the initial cost of the asset. Actually, in the present case, the written down value of the asset was 24 per cent; but an initial depreciation of

20 per cent, had not been deducted from this by reason of the specific provision that such depreciation is not to be taken into account for the

purpose of determining the written down value. The total percentage of depreciation allowance to which the assessee would have been entitled in

the relevant year was 7.2 per cent.; which obviously was less than the 24 per cent, which was the written down value; but if the initial depreciation

of 20 per cent, was taken into account, then the total depreciation would exceed the original cost of the asset. As against 24 per cent., there would

be a total of 20 per cent, initial depreciation and 7.2 per cent, total depreciation during the year, the excess thus being 3.2 per cent. Now, Mr.

Mehta"s contention is that for the purposes of provisio (c) -- and this is the 2nd branch of the argument -- although the proviso talks of the

aggregate of all allowances, initial depreciation allowance should not be treated as depreciation allowance at all. The reason he gives for adopting

such a course is that initial depreciation is not to be taken into account in determining the written down value. If proviso (c) had anything to do with

written down value, this argument might have had some substance in it; but proviso (c) in terms speaks of the original cost to the assessee and not

of a written down value, and there is, in our opinion, no warrant for. equating the words ""original costs"" in the proviso with the words ""written

down value""; nor is there any warrant for treating what in terms is depreciation, namely, the initial depreciation, as ceasing to be depreciation for

the purposes of proviso (c) merely by reason of the fact that it has been specifically provided by the Legislature that such initial depreciation shall

not be taken into account in arriving at the written down value. Mr. Mehta''s argument is that on the basis of the written down value the assessee

should be entitled to depreciation allowances up to the time when the written down value is reduced to zero; which, in effect, means that he should

be given depreciation until the total depreciation exceeds the written down value. The argument, therefore, obviously involves a consequents that

we shall have to read in proviso (c) to Section 10(2)(vi) the words ""written down value"" in place of the words ""original cost"". In our opinion, there

is no warrant for adopting any such course. Moreover, the interpretation that Mr. Mehta wants us to put upon the section is opposed to all notions

of accountancy or commercial practice, because the aggregate of depreciation allowances can neither in accountancy nor as understood by

commercial men ever exceed the original cost to the assessee of the asset an respect of which depreciation has been granted.

6. The result, therefore, is that our answer to the question referred to us will be in the negative.

7. Assessee to pay the costs.

8. Answer in negative.